MICHIGAN SUPREME COURT

June 14, 2001 Public Hearing

JUSTICE CORRIGAN: Good morning.

JUDGE JOHNSON: Chief Justice Corrigan and Justices of the Michigan Supreme Court, I'm Rick Johnson. I'm the chief judge of the Kalamazoo County Circuit Court and it's my very great pleasure to welcome you today to Kalamazoo. We appreciate your coming to our community. We appreciate the opportunity to hear from you and to you let you hear from us. We also will want to share with you some of the exciting things that are going on locally and around the state. These are exciting times to be in the courts. Many people from our three courts are involved in the next generation trial court project. There's a lot of activity going on that relates to that. We're particularly interested in the electronic linkage between our courts and the problem solving court concept. You'll be hearing more about that. Our three local courts have been involved in the drug court movement for many years. We believe that's an approach that enhances justice and we're excited to have a chance to share that with you. Not only do the courts locally work together, we work with the other branches of government. And Kalamazoo has a rich tradition in that regard that we do wish to share with you. We recognize the separation of powers. Recognize there are very good reasons we have three branches of government. But we have figured out ways to partner, have respect for the role of each of the participants, have respect for the citizen that comes before the courts and properly expects to be treated in fairness and with respect. You'll be hearing from a number of people today. We are again grateful to have you here, excited to have you here and look forward to the opportunity to tell you more about what's happening here and elsewhere. Thank you for coming.

JUSTICE CORRIGAN: Thank you Chief Judge Johnson and on behalf of my colleagues on the Supreme Court we are very pleased to be present in Kalamazoo this morning and we look forward to the presentation later today. I concur in your view, Judge Johnson, that Kalamazoo and this bench has a long and proud history in our state. I've learned that, for example, judges like Luchen Sweet and Raymond Fox, your predecessors who contributed much to the history of our state and your bench continues this tradition and indeed you're a leader in the drug court movement in the United States and we look forward to the presentations later today. So thank you for coming over today and welcoming us and we'll see you again later this morning at 11:30 when the drug court showcase begins. In the meantime we're beginning our public hearing which we do pursuant to our Administrative Order 1997-11. The Supreme Court convenes several times a year for purposes of hearing comments from the public on proposed rules and we have this morning eight people scheduled to speak on various items that are under consideration by the court. Let me just

indicate if you are a speaker, you have three uninterrupted minutes to make your presentation to the Court. After that period if the Justices are interested then they will ask questions of you in order to clarify your presentation this morning, but we ask you to keep your remarks short and to the point. We have come to court today prepared and we're ready to listen. Without further adieu I'll call Item 1, 00-16.

Item 1 - 00-16: Proposed Amendment of MCR 2.602

MR. FESLER: My name is Terry Fesler. I was hoping I wouldn't be first. I've never done anything like this before. I wish I had had a couple other people to kind of watch and learn. I used to manage a law office and I notice that the Amendment to 2.602 about specific objections, I notice that some court orders are very complex and without the court transcripts it's going to be near impossible to really make a valid objection unless a lawyer is really really on his toes. Some court orders are very simple and it's really no problem at all entering them. The purpose of my attempt to come up here, which I may get shut off, is to bring to the attention of the Supreme Court the abuse of this rule. I find in my experience more often than not, the submission of an order under the 7-day rule is used to abuse the process to get an order entered that doesn't have anything to do with what was really ordered by the court or consistent with the transcripts and to do it in such a manner that the opposing side makes it difficult to file valid objections and the order enters under the 7-day rule because an objection wasn't properly made and therefore now you have an order that's actually appealable or could have been appealable but in conjunction with certain attorneys, that that's the use of that particular rule to enter an order in. An order can enter by the court, an order can enter by preparing before you bring it to the motion in front of the court and the court can sign that order at the time of the hearing, or you can submit it under the 7-day rule, and I find that that rule is often abused. Some courts have video cameras and you can get the tape of the hearing and take it home that afternoon and actually draw an order up consistent with what the court ordered by reviewing the videotape. It's a hard coin to toss because both sides are good and both sides are bad, but I find this rule is abused. Seven days should be extended to 14 days. I can recall some instances but I'm hoping that the Supreme Court will consider that this rule is more often abused, and it's used, abused to get orders entered that are inconsistent with what was actually intended, that it favors the party who is able to abuse this process and the adverse party who is going to suffer loses their chance to appeal and object.

JUSTICE CORRIGAN: All right. Thank you M. Fesler. Do the Justices have any questions for Mr. Fesler. Thank you sir, we appreciate you coming you today. Second is Dawn M. Childress from the Michigan Association of Circuit Court Administrators.

MS. CHILDRESS: Good morning, Your Honors. Actually I'm here on

behalf of the Michigan Association of Circuit Court Administrators and on behalf of the 35th Judicial Circuit Court in Shiawassee County and I'm glad to be here this morning. I had previously written comments regarding the proposed amendment to this court rule on behalf of the Circuit Court Administrators and at our last quarterly meeting last month we had decided that we would submit comments in favor of this proposed amendment for a few reasons. First of all it's going to shift the burden to the objecting party. A lot of times we get people coming in and just filing objections and they don't provide notice to the other person on a timely basis and so we are having months go by sometimes before an order is entered or judgment is entered in any kind of case. And it also gives the judges the option to sign the order if the objections are found to be without any basis if the judge finds that the order does comport to his or her ruling the judge can sign it over the objections. On behalf of the Circuit Court in Shiawassee County I also wanted, contrary to what Mr. Fesler is saying, what we see on a daily basis is the abuse of this court rule in actually filing objections. Attorneys and *in pro per* litigants are using this objection process as a delay tactic. They will just file their objections because they are upset with what the judge has ordered, in some instances a referee. I understand that the referee court rule is different from this and it would not change that. However, I would also urge adoption of the specificity on that court rule too.

JUSTICE CORRIGAN: Thank you, do the Justices have any questions for Ms. Childress? Thank you for coming this morning. John Ferrier of the Referees Association of Michigan. Is Mr. Ferrier here.

MR. FERRIER: Good morning, Your Honors. May it please the Court, I'm here on behalf of the Referees Association of Michigan. My name is John Ferrier. I'm a referee for the Circuit Court in Kent County. I work in the area of domestic relations. Our association supports this rule for a number of the reasons that Ms. Childress had already pointed out. Number one, the requirement of specificity in the objections to the proposed order is one that frankly some lawyers already assume is in the rule and simply is not. Objections may be filed under the terms of the current rule with no specificity whatsoever. Number two, if specificity is required of the objections, it's going to help the court and both of the attorneys or the parties if people who are proceeding *in pro per* to frame the issues in crystal clear terms, aiding the judge in coming to the correct conclusion. A difficulty that we had with the proposal falls within the new language under sub (b) which is found on page 2 of the proposal. That would be proposed MCR 2.602(3)(b). In that the court is given the discretion which I believe is a good idea to sign a proposed judgment order that has been objected to if the objecting party fails to comply with the rule or if in the court's determination a proposed judgment or order comports with the court's decision. At that point I think we can have a situation under the language that has been proposed where the court has two orders in front of it, that of the proponent, that of the objector. This language appears to allow the court to enter either of those orders without a hearing. I think the

proposed rule could be clarified to make sure that it is clear that the court is going to have a hearing. I believe since rules (c) and (d) the subrules remain unchanged, the concerns such as those expressed by Mr. Fesler having to do with the appellate period may be addressed in the same rule that the present rule does. In other words, I don't think the present rule is any worse as far as the appellate considerations go than the proposed rule. In sum, I think this will be a step forward, particularly in the area of family law which is my discipline. We find a lot of people proceeding *in pro per* and I echo Ms. Childress's comments about the difficulty that that causes family attorneys and judges in entering orders in those cases when frivolous objections are filed, particularly *in pro per*. I don't know if I've used my time or not but I've said what I had to say. Thank you.

JUSTICE CORRIGAN: Thank you Mr. Ferrier. Any questions, Justices?

JUSTICE KELLY: Do you have a proposed rule wording change for us.

MR. FERRIER: I haven't, Justice Kelly, and I wish I could bring one today with me but I thought I would do the smart thing and steal the ideas of the people who had spoken before me and then frame my written comments in terms of proposed language that I think would remedy the problem that I've addressed. As I understand, written comments, although you have the administrative hearing today, are still allowed until July 1 and now that I have the advantage of knowing what Mr. Fesler and Ms. Childress had to say, and I think they are valid points.

JUSTICE KELLY: Then you'll submit it then, right.

MR. FERRIER: I will.

JUSTICE KELLY: Good. Thank you.

JUSTICE CORRIGAN: Anything else? Thank you Mr. Ferrier.

MR. FERRIER: You're welcome, and thank you.

JUSTICE CORRIGAN: Now Mr. Timothy McMorrow from the State Bar Appellate Practice Section.

MR. MCMORROW: Good morning Your Honors. We have submitted our letter stating what our objections are to this proposal. I would just like to briefly state that our objection is to section (d) as Mr. Ferrier mentioned because it increases what is already confusion in terms of the actual time when an order has entered and the difficulties, the amazing difficulties that you sometimes have in finding out when an order has been entered.

Having said that, let me say that we are not unsympathetic with the issues that have been raised by the proposal itself. The notion that objections should have to be specific makes a lot of sense. It makes a lot of sense, I'm speaking only for myself on this, that the objecting party be the one that has the burden of going forward with setting up motioning the matter for hearing. That really is not an appellate concern as much as the concern is when is that order entered. And very often it is difficult to find out exactly when that has happened, and it does happen that people do not find out that an order is entered until several days later after the order has been entered. We believe this would increase the already existing confusion that the order entry rule creates for appellate practitioners. The problem is that we do not at this point have anything to offer to the Court as an alternative because as we discussed this issue it seemed to us that the problem, we are opposed to this particular amendment because it increases a problem that already exists. What we think is probably necessary is to very carefully look over this rule and try to come up with some kind o solution that will be satisfactory to everybody that would help to eliminate some of the confusion that exists right now as to exactly when orders get entered.

JUSTICE TAYLOR: Mr. McMorrow, in the present system and as proposed here, wouldn't it be the case that if the judge is operating under (d) that the order would be signed by him, I'm presuming now that he would then or have the clerk send it to the parties, wouldn't he.

MR. MCMORROW: Actually, I believe the rule is that the person who gets the order is supposed to serve it on the parties. The person who submitted the order, I think.

JUSTICE TAYLOR: I'm at the process now where the judge has gotten a spurious objection to the proposed order, let's say it's utterly frivolous and so he or she signs the order. What then happens as you understand it now.

MR. MCMORROW: There is no uniformity as to what happens. Sometimes that order, the order will go, the order is supposed to go to the person who drafted the order, who then serves it upon the other parties. Some courts will send them out to all the parties anyway on their own. Some courts will take the policy that we'll send it out to everybody as long as you give us a self-addressed, stamped envelope and we don't have to incur any extra expense. So it varies from court to court. There is no uniformity in the way, is my understanding.

JUSTICE CORRIGAN: Mr. McMorrow, have we ever clarified the rule that the order is entered when it's posted to the docket. Have we dealt with that issue.

MR. MCMORROW: I don't think you have, Your Honor. Now here's the one problem here, of course

JUSTICE CORRIGAN: It's a serious problem for appellate practitioners, I know.

MR. MCMORROW: There is a distinction between when the order is entered under 2.602 and when it is entered under the appellate rules. Under the appellate rules it's entered when it's docketed and then the problem you have there is sometimes the docket entries which are supposed to be kept up to date every day, sometimes they are not, depending upon the court. That is a problem that varies from court to court.

JUSTICE CORRIGAN: I am not clear on why requiring specificity in the objections is going to increase the problem that you are talking about.

MR. MCMORROW: I don't think that will. I don't think that's a problem.

JUSTICE YOUNG: The fact that a judge can sign *su asponte*, right.

MR. MCMORROW: Yes. The fact the judge can sign *su asponte*, and Mr. Ferrier made a point which I think is a very good point that we made in our letter as well, that as you read this proposal, a proposed judgment or order, well of, it sounds as if the judge could sign either one. Eventually you're going to get the order and you're going to know which order was signed, but it sounds as if the judge could enter either order and you find out an order has been entered, until you physically get that order you don't know which order was entered.

JUSTICE CORRIGAN: I'm sure that the Court would be very interested to have the Appellate Practice Section look at this problem and come up with some proposed solutions for us. We always invite your input on things like that.

JUSTICE YOUNG: Can I ask why you haven't come up with a solution yet?

MR. MCMORROW: I would say that this is one of those issues that people have sort of talked about we really should look at but until this proposal came along we had not systematically done it. The big problem is that I could think–I could tell you the things that were kind of bandied about about solutions to the issue but the problem is every one of them has its own problems and we wouldn't want to propose something until we had really hashed it out. And we really didn't start to hash it out until this proposal was brought out about two meetings ago. That's the major reason.

JUSTICE CORRIGAN: Thank you for your input today. Any other

speakers on that item. Next is Item 2.

Item 2 - 00-19: SBR 15

MR. LIEB: May it please the Court, good morning Your Honors. I'm doubly pleased to be here this morning. First I'm honored and pleased to be the chair of the State Bar Standing Committee on Character and Fitness and secondly, I'm a proud graduate of Kalamazoo College and I'm always looking for an opportunity to come back to Kalamazoo and enjoy Kalamazoo. I'm here obviously to speak on behalf of the proposed increase in the fee for character and fitness investigations from $125 to $225. But let me make my points and I'll be as brief as I can be. Our committee exists pursuant to Supreme Court Rule 15, Section 1. It consists of 24 members. 12 regular members and 12 associate members. And we are mandated, together with the district committee which consists of 130 practicing lawyers and judges, to investigate and make recommendations with respect to the character and fitness of every applicant for admission to the bar who applies to take the bar examination. The committee performs its task by cooperation with the staff that is assigned by the State Bar, together with the committee members. In the past year, for the period May 1, 2000 to April 30, 2001, the standing committee held 33 full evidentiary hearings, which average to roughly about a day. These are evidentiary in the sense that there is a court reporter present and evidence is presented in a traditional sense of more than one party presenting its position. The State Bar presents its position and the applicant presents its position. Hearings are held not just in Lansing. That was the case at one point in time. Hearings are held in Grand Rapids, Lansing, Southfield, on any day that is convenient for the participants as opposed to past practice which I believe was on a day in Lansing when many hearings were held one after the other. The hearings are held not in any place where funds have to be expended by the bar. Hearings are held in the officers of the lawyers involved. Generally in the offices of the presiding chairperson through the cooperation of the law firms. There is a lot of work that is done in advance of these hearings. That work is performed by the State Bar staff. There is a tremendous amount of work that begins with a review of the Affidavit of Personal History to determine whether a referral is necessary. After referral, then there can be the district committee hearing followed by the standing committee hearings, with reports to the Board of Law Examiners. The staff is an absolutely fantastic staff. Those of us who have the pleasure to be involved in Bar activities could not ask for a better staff and they really, really work hard. There are six members of this staff. We have a manager, two analysts, two investigators and an office manager. The Court should note that our percentage of investigations process is steady over the past four years running at about 60-66% of those who have applied. We are requesting that the fee be increased as basically a matter of fiscal responsibility. There was a time when the State Bar budget did not have the kind of functional budget which allowed us to know both actual costs and indirect costs. When we began looking at that a few years ago we realized that our actual expenses exceeded the income that was generated from investigation fees. We note

that there has been a desire by the Legislature and the Bar to be fiscally responsible. We note that the BLE recently increased its examination fee from $175 to $300. We initially hoped, frankly, that the fee increase might cover the existing shortfall but in fact the fee increase we are seeking represents a balance between asking the applicants who are involved in the process to bear the cost of the process with the additional cost borne by the State Bar. And therefore we have asked that the amount be increased to cover as much as we believe is reasonable, that shortfall. The total cost now as proposed would be $564 which is neither the highest nor the lowest in the United States. There are 9 states who are higher and there are 7 other states that are within $64 of the proposed amount. The investigation fee of $125 was set in 1992 at a time when the Bar did not have that functional budget. As it turns out, that amount probably then didn't cover the actual costs, though direct costs were covered. Inflation alone would take the number of $125 up to $150-$162. The department has two fewer employees than it did in 1992. There is more detail to investigate in the applications that are coming in front of us. We have added two questions which we believe are appropriate regarding an applicant's financial responsibility and financial history. We sense that as well that there are older applicants require additional investigation because they have more background to be examined. But every Affidavit of Personal History is reviewed and when certain trigger questions reflect the need for investigation there is an investigation. And we are doing, we believe, what the Supreme Court and what the Bar wants us to do, and we do it with great pride. To cap this, I would simply say that the amount of the increase we are seeking, we believe, is fair and represents a balance and places a larger share of the investigation on the applicant, but not the entire share. And with me I would also add that I am joined by John Berry, who is the executive director of the State Bar, and we are supported today by Diane Van Aiken who is the manager of the character and fitness committee and also supported by Janet Welch who is the general counsel of the State Bar.

JUSTICE CORRIGAN: Thank you Mr. Lieb. Justices? Justice Markman.

JUSTICE MARKMAN: Mr. Lieb, if I understood you correctly, you suggested that in addition to the questions that you have now included on applicants' financial backgrounds, there is generally more detail that is involved. What are you referring to in that regard.

MR. LIEB: Well I'm thinking that–there are a couple of areas. First of all, for those applicants who are older, of course, there is just more background to look at. There's more time. There are more items to be checked. There are more places that such a person has lived. When we look at the Affidavit of Personal History, there are 50-some questions on that affidavit and they include such background questions as where one has lived and we need information from every one of those states, for example.

JUSTICE MARKMAN: But except for some of the financial inquiries, you're not adding to the scope of the investigation, are you. Are you adding more questions on other subject matters, for example.

MR. LIEB: I don't think that the scope in general of the other questions has changed significantly in the last few years. I think not.

JUSTICE CORRIGAN: When you say 33 evidentiary hearings held, you say that's been a stable number for the past four years.

MR. LIEB: I think generally the hearings have run around in the 30s.

JUSTICE CORRIGAN: Is that a big increase from 1992.

MR. LIEB: Let me double check that.

JUSTICE CORRIGAN: If you don't know right now, you can let us know later.

MR. LIEB: I can let you know. I think from '92 it does represent an increase, but I think the percentage is the same.

JUSTICE CORRIGAN: One other question I had, when you talk about older applicants, is that an indication that there's a demographic change. In other words, that there's an increase in age of many bar applicants today by contrast with 1992, say.

MR. LIEB: I think that has been a shift that has been ongoing and I can speak for myself because I was an applicant in 1979 and started practicing at the age of 29. I noticed then that the number of folks who were in my class contained a significant number of those who had other life experience. I think that has only increased, that has not decreased. So that is just a trend that has continued.

JUSTICE CORRIGAN: Justice Young.

JUSTICE YOUNG: If I understood you correctly you indicated that inflation alone would have raised the existing fee of $125 to $150 was it?

MR. LIEB: About, yes.

JUSTICE YOUNG: Can you tell me how you get to the other $75. What

beyond inflation gets you to, you're proposing to raise it to $225.

MR. LIEB: That's right, and I will tell you that historically, Justice Young, when this proposal was made which was over a year ago, based on the information that existed at that time, it was believed that the proposed increase would actually cover the enter gap that existed between income and known expenses, whether direct or indirect. And by indirect expenses I mean allocations for use of a building, allocation for some salaries that had not previously been allocated to the department. So over a year ago we believed that that would cover the entire increase. As it turns out, with much needed staff increases, although we decreased staff by two over the last few years, there was a need to raise some salaries. And I might add that the salaries of our investigators, for example, are still substantially lower than comparative positions. The Attorney Grievance Commission pays approximately $49,000 to its investigators. We pay substantially less. I would say Character and Fitness pays its investigators substantially less than that. But there were some needed expenses that raised that gap more than we anticipated. They are appropriate, they are necessary for us to do what we do, and we're as efficient as we can be. But that's the reason why we can't close the gap entirely, but that's what the other $75 was.

JUSTICE MARKMAN: Have you attempted to analyze what the marginal costs of each additional investigation is. It's not unreasonable to take into consideration the building costs and the employee costs but I'm wondering if you have any sense in terms of what additional financial burdens are imposed upon the system by the requirement that each additional applicant have to be investigated.

MR. LIEB: I cannot answer that question. I don't know, and I don't know whether the Bar, I'll have to defer on that. I don't know the answer to that question. I would point out that there are efficiencies built into this that aren't accounted for at all. For example, the hearings are held at law offices through the cooperation of the members of the committee. And there are generally no charges for that sort of thing. They're those kind of indirect cooperation costs that are built in and are truly efficiencies. The fact that we have hearings in a place other than Lansing creates efficiencies for the applicants. They are the indirect kind of things we've tried to do over the past few years to make sure that the process works as smoothly as possible.

JUSTICE CORRIGAN: All right, are there any other questions? Mr. Lieb, on behalf of the Court I thank you for your service as chair of the Character and Fitness Committee and I ask that you extend to the members of your committee and the local district committee the thanks of the Court for the pro bono work that you do in behalf of our profession in Michigan. Thank you.

MR. LIEB: Thank you, Your Honor.

JUSTICE CORRIGAN: At this time I'll call on Mr. Berry if he has any comments.

MR. BERRY: Chief Justice Corrigan and Justices of the Michigan Supreme Court. I appear before you today as the new executive director of the State Bar of Michigan and I am extremely proud of that opportunity to be able to serve our members, our prospective members, our applicants to become members as well. And I will use part of my time to respond to some of the questions that have been asked and also to make myself available then to answer any other questions from the Court. One question was asked concerning the details of the investigation and in essence how investigations have changed since 1992. Since 1992 we have had a significant percentage increase in the number of investigations, as much as 25-30%, as well as the percentage of cases that are being investigated have increased as well. The level and detail of the kinds of analysis that Justice Markman mentioned, we have added two additional questions which were very relevant questions and are asked by almost all the states. In addition, as you may be aware, Justices, my experience has been to evaluate both regulatory systems and bar exam systems in character and fitness around the country. There has been a trend around the country of more detail in investigations. When our citizens file complaints or when anyone files an issue, they tend to be more in volume, more thought out, they take more time. And I think that is consistent with my observations as I have studied this system as well. The nature of the questions I think are quite appropriate from what I have seen, and in essence we are not over-investigating the cases in any respect. The question concerning the cost that Justice Young mentioned, I would like to go into some detail with that, and I don't mind using all 3 minutes of my time and then continue that as your question response time, because I think that's the vital issue.

JUSTICE YOUNG: The way I understand it, we would be raising the total cost to applicants to the Bar to $550 total, plus the additional expense of obtaining fingerprints.

MR. BERRY: That's correct, Justice Young, and let me start with the biggest of pictures and work my way down to as much detail as Justice Young, you want, or others. Again, as that has been mentioned, concerning the size of our jurisdiction, our state compared to others, it is in line with the kinds of expenses that other states have dealt with. Secondly, the big picture as far as the money we're spending. The amount of resources, the amount of staff we're using is actually well below the average for the size of the jurisdiction and in fact the efficiencies you've already heard of, from 8 to 6 persons as well as we have done a lot more of the work at the initial level, so that people don't get brought into the bureaucratic system, costing more money, costing them more money. So in the bigger sense I think that we have done a tremendous job in that regard. Now in reference to the actual

money we're talking about they have to pay and why. There are two components. Mr. Lieb sort of spoke about that. One is cost allocation component. And in all candor, only in the last couple of years has the Bar really addressed that issue. If you go back as I have, and as you know, I'm studying every aspect of the Bar, we're trying to look at how we looked at our finances in 1992 versus now, we had no way of being able to cost-allocate. This goes a little bit to Justice Markman's comment as well about those costs that aren't direct transcript costs or other costs. The kinds of costs of heating, the kind of costs for space, the kind of costs for the things that but for us doing this work would cost a certain amount of money. When we did that we realized all of a sudden that the disparity between the amount that the applicants are paying and that our dues members are in essence making up for was greater than what we had thought. And the balance that Mr. Lieb talked about, the balance really was much more in Bar members as a whole paying for the freight. That balance now has been raised more to an even level. So in one sense we now know what the costs are.

JUSTICE YOUNG: What is that cost per application. If it isn't $225, what is it.

MR. BERRY: I'm sorry, would you repeat the question Justice Young.

JUSTICE YOUNG: Well I'm given to understand that $225 does not cover the entire cost of the character and fitness vetting process. What is the total cost.

MR. BERRY: The total costs, expenses, for this projected year are $380,610 of which the income that we now have projected would be $147,850, leaving the amount of money that in essence would be drawn from our members' dues and our members' support to be $232,760. Even if we receive the additional $100, with a little over 1,000 applicants we still will be well over $100,000 short, the applicants actually paying for the costs of the services being provided for them.

JUSTICE CORRIGAN: Can you answer the rather philosophical question with regard to other states and your information, Mr. Berry. Do other states' bar associations subsidize the costs of the applicants' investigation in the fashion that Michigan is or, I appreciate that we have an integrated Bar here so I'm wondering if there is any national experience or is this effectively we're trying to move more I guess to a pay as you go and have the applicant pay the cost of bar admission. But what's your sense on that.

MR. BERRY: My sense, Justice Corrigan, is that we all are trying to find that appropriate balance, just as this Court is, and the Bar is, to try to make that kind of fair balance. And the reason why it is somewhat of a balance is that obviously the members get some benefit or prospective members get a benefit by passing the investigation and getting in. But we all, as attorneys and representatives of the judicial system, get a benefit by

having lawyers that come in that have character and fitness that is able to give us pride in our judicial system and the public to have confidence in it. So it is always that balance. And my experience directly to your question is that we, all the states, have balanced that out. Few states will have it all one way or the other, those some do. The state I can from, Florida, has much more staff relatively speaking per applicant. I'm not suggesting that, by the way. But they ask for much more from their applicants. It's close to $1,000 total for both procedures. So the answer to your question is across the board with most trying to reach this kind of balance between both sides. I will say, since you've asked me directly the philosophy, both my personal philosophy and I believe the Bar's is, is to try to become much more fiscally responsible by trying to get that balance by which people who use a service do usually pay for that service. Regulatory aspect of the Bar carries a little different component. This isn't something that somebody has a choice of doing if they want to become a lawyer. Back to my response to Justice Young concerning the expenses, I talk sort of the cost allocation side of expenses but what really actually has gone up directly in our expenses since 1992, that's the second component of why we're coming back to you, and we have done a good a job of holding together the expenses of printing and some of these other matters, sort of those direct costs. Some other issues have gone up. One is the salaries. Approximately $34,000 has gone up in salaries. I do not apologize for that. Frankly the salaries of the investigators, as Mr. Lieb already indicated, are still well below the average and well below what you would inspect for investigators' salaries. Occupancy expenses have gone up and the actual expenses of transcripts have gone up as well. So there is an increase, and that would be expected. The combination of inflation, the combination of the increased investigations as well as a much better handle on what the actual expenses are. So we come before you and strongly ask you to allow us to have this balance that we need to make us more fiscally responsible and fair to all the parties concerned.

JUSTICE WEAVER: In follow-up to Justice Young's questions, did you say it was like $380,010, did you give some figure along that line.

MR. BERRY: Total expenses, Justice Weaver, projected for 2000-2001 is $380,610.

JUSTICE WEAVER: Okay, so that's a fairly exact figure, there, with $10.

MR. BERRY: Don't quote me to the $10 Justice Weaver.

JUSTICE WEAVER: I think he asked for a per applicant. I'm interested in how you allocate, for instance, the heat for the building or the costs of the building per applicant.

MR. BERRY: In all honesty Justice Weaver, I feel the same way. We are

working on the way you allocate those expenses out and bars do those in all kinds of different ways. We really don't do that per applicant. I'll give you jut a general comment that when you do cost allocations within a bar, many of those kinds of expenses that you can't directly charge, what you do is you take those total amounts of money, put them together, and then you find some factor to determine what's a fair amount to charge to that particular department. We at our bar have done it based upon salaries. Not just the employees, but if I'm using time today to come here to argue on behalf of this particular department's interests, then we use my time allocation or salary allocation to sort of decide how that goes within a department. We have not by any means reached a level of sophistication to be able to say that we're going to charge applicant A six cents for heat or whatever that is, nor do I expect we could reach that.

JUSTICE WEAVER: So you didn't do that.

MR. BERRY: No, ma'am.

JUSTICE WEAVER: I didn't think you did. So you do have some sort of list where you allocated so much for heat and so much for your time and so much for anybody else's time.

MR. BERRY: Yes, Justice Weaver, we can provide you with additional information on that. As well, I wish you to understand that this has been an evolving process since 1992 and which up until about 1998, in all candor there was very little attempt to do this. We are starting that process and I would estimate that I will probably make some strong recommendations to change that process in many regards, but we will let you know where we are right now.

JUSTICE YOUNG: Are these allocated already? We have some form that talks about occupancy.

MR. BERRY: Right. The occupancy expense is an allocation expense directly which was not accounted before, which any good bar association would be allocating those costs directly back to a department and we are beginning to do that now. And that is again why we strongly urge this increase. This is really a two-part request. It's increased expenses as well as more accurately reflecting what we should have reflected back in 1992.

JUSTICE YOUNG: Let me just see if I understand. The total estimated cost of processing applicants in the next fiscal year is $380,000. You expect at $125, the current rate, to generate on the base of expected applicants, approximately $147,000. That leaves a shortfall of $232,000.

MR. BERRY: Yes, which would have to be met by dues.

JUSTICE YOUNG: Right. And your suggestion is that if the increase were raised $100, there would still be a $100,000 shortfall that would be borne by the practicing, dues paying members of the bar.

MR. BERRY: Approximately, yes Justice.

JUSTICE MARKMAN: Mr. Berry, thank you. Just out of curiosity perhaps, more than anything else, can you tell me of the investigations that are conducted, what percentage of them produce information that eventually leads to the exclusion of the applicant from the practice of law in Michigan.

MR. BERRY: Justice, many times I find it's those just quirky questions that are the most dangerous, but I will answer that directly to you and that is, less than 5% of the applicants actually lead to not getting their application based upon character and fitness or some other finding. That's a low percentage and it's consistent with many of the other states that we have. But many of those do require investigations, obviously, which then lead us to believe that they still should be lawyers.

JUSTICE MARKMAN: And again out of curiosity, is your response limited to either admitting or not admitting, or are there conditional admissions or delayed admissions, or do you have any additional tools in your arsenal when you see problems that are of concern but maybe not of concern that would suggest that the person ought to be permanently barred from admission.

MR. BERRY: I have two choices at this moment, three choices. One is to say I don't know the answer, two is to guess and three is to look back at my expert who is Diane, but I think the answer to that is we do not have any conditional admissions. I got the answer correct. I will say I come from a state which did develop those kinds of conditional admissions which allow the court to make some decisions that okay, we're going to let you in but we're going to closely monitor in financial areas or in drug and alcohol areas, and they prove to be very useful in those states.

JUSTICE CORRIGAN: Any further questions? Thank you, Mr. Berry, for your helpful comments and we're pleased to be working with you.

MR. BERRY: I too, Thank you very much.

JUSTICE CORRIGAN: My records indicate that no one has signed up to

speak on Items 3, 00-22 and Item 4, 00-26.

Item 5 - 00-30 MCR 7.205

JUSTICE CORRIGAN: The next speaker I have on Item 5, 00-30 MCR 7.205 proposed amendment, is Timothy McMorrow. Is Mr. McMorrow here?

MR. MCMORROW: On this one we have proposed an alternative, and in our letter we stated that the problem we have with this proposal is we thought it might have the unintended consequence of precluding an application for leave to appeal but was filed more than 21 days after the final order but relating to an interlocutory order that may have been entered some time earlier in the litigation. And the proposal that we have suggested is to change the language for the leave to appeal should not be granted more than 12 months after entry of a final judgment or other order that could have been subject to an appeal of right or entry of the order or judgment to be appealed from. We think if the Court would change the rule as we have suggested in our letter, that that would resolve the problem that we see but we do see the potential problem there where you could have an interlocutory order which was not appealed, which would be properly be subject to an appeal of right, which is lost even as an application for leave to appeal by virtue of the fact that a timely claim of appeal is not filed perhaps for a very good reason that would ordinarily justify the grant of an application for leave to appeal. Otherwise, I have stated what we stated in our letter what our concern is with this proposal and I have nothing further to say unless you have questions.

JUSTICE CORRIGAN: Are there any questions, Justices? All right, thank you Mr. McMorrow. Is anyone signed up to speak on Item 6?

Item 7 - 00-15 AO 2001-1

JUSTICE CORRIGAN: Our last person to appear is Captain Jack Shepherd of the Michigan State Police on Item 7, our administrative file 00-15, administrative order 2001-1.

CAPT. SHEPHERD: Good morning. It is a privilege to be here on behalf of the Michigan Department of State Police. The matter that brings us here today is administrative order 2001-1 and that involves the security of the courts and the fact that weapons are no longer allowed in the courts unless there is an agreement with the chief judge in that court. From the perspective of the Michigan Department of State Police we find that very difficult as a business practice because on any given day we have over 1,800 investigators or uniformed personnel that are actually testifying in court someplace in the state at some level of court throughout the state. That would be very difficult for us alone,

let alone the other 627 police departments in this state who would have to work out special agreements. In addition to that, we think from a public safety standpoint, the safety of the officer, as well as the safety of the general public, as well as the safety of the justices that we would be serving before, could be in jeopardy as a result of the officers not being in possession of their weapons. In addition to that, we find that the administrative order that the Supreme Court has adopted for itself very recently, that being 2001-3, is in line with our recommendation that we had submitted in writing earlier this year which would allow for officers in the course of their official duties to be armed as they come in to testify in court. If they are a party to a case or they are off duty and they are not serving in their official capacity, then they too would have to secure their weapons according to the dictates of the individuals courts. That in essence is our recommendation and we would ask that you consider the concerns that we have because of the difficulty of this particular administrative and the burden that it would present for an agency as large as ours and as encompassing as ours throughout the state. Thank you.

JUSTICE CORRIGAN: Any questions, Justices.

JUSTICE YOUNG: Could you just clarify for me what your concern is. As I understand our administrative order 2001-1 merely directs local courts to establish a plan.

CAPT. SHEPHERD: Yes, Justice, and in essence what it says though is that unless there is a plan that allows for weapons, there shall be no weapons allowed in the court. That was our reading and our understanding. I think the plan is to secure weapons so that officers would not have weapons in any of the courts.

JUSTICE CORRIGAN: You're only asking on behalf of the Michigan State Police or all police officers in the state.

CAPT. SHEPHERD: That (inaudible) dangerous, Justice, because I'm not authorized really to speak for any other law enforcement agency, but I think I could speak very easily for the Michigan Association of Chiefs of Police and the Sheriffs Association on this issue that as a business practice it would certainly make things more fluid, but certainly for the Michigan State Police, as I pointed out, with some 1,800 investigators on any given day possibly testifying at any level of court in the state, it would make it very difficult for us to rise to that standard and enter into agreements with each individual chief judge. Now we certainly will do that if directed, but we would ask for your dispensation.

JUSTICE CORRIGAN: Thank you for coming today Captain Shepherd. We appreciate your remarks. At this point the Court will take a recess until 11:30 when we will come back for the presentation on the drug courts. Thank you all.